IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

INGLEWOOD RESIDENTS' PROTECTIVE ASSOCIATION, etc., et al., Plaintiffs and Appellants, vs. CITY OF LOS ANGELES, Defendant and Respondent.	CIV. NO. 41894 (Superior Ct. No. 946,875) COURT OF APPEAL- SECOND DISTRICT FILED JAN 15 1975 CLAY ROBBINS, JR. CLERK

APPEAL from judgment of the Superior Court, Los Angeles County. Stevens Fargo, Judge. Affirmed.

Greenwald, Landrum & Baim, and Jack A. Hendler, for Plaintiffs and Appellants.

Burt Pines, City Attorney, Milton N. Sherman, Chief Assistant City Attorney, James H. Pearson and Ronald J. Einboden, Deputy City Attorneys, for Defendant and Respondent.

On January 24, 1974, we filed our opinion herein reversing a summary judgment granted by the trial court. The effect of that judgment was to dismiss appellant Inglewood Residents' Protective Association, a nonprofit corporation, from the action. The Supreme Court thereafter granted a hearing and subsequently retransferred the appeal to us for reconsideration in light of its decision in City of San Jose v. Superior Court, 12 Cal. 3d 447, decided September 6, 1974.

On reconsideration, we adhere to and readopt

with minor amendment the portions of our former opinion which set forth the procedural history leading to this appeal, and which deal with appealability and the standing of the Association. In light of the decision in San Jose, we hold that Association cannot maintain this suit as a class action.

We, therefore, affirm the summary judgment dismissing Association, since its only role in this litigation is as a class action plaintiff.

Procedural History

The procedural history of this action is long and convoluted, although the record on which this appeal is brought is limited in scope[1] and the issues raised are comparatively narrow. Association and numerous individuals who live in the City of Inglewood filed the original complaint in 1969, seeking damages and injunctive and declaratory relief for injuries allegedly sustained because of the operation by Los Angeles of Los Angeles International Airport. This complaint eventually was succeeded by a third amended complaint.[2] The third amended complaint contains nineteen so-called causes of action. Ten of

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[1] The clerk's transcript did not contain the order appealed from nor many of the other relevant proceedings or matters below. Accordingly, pursuant to rule 12(2) and on our own motion we have augmented the record by examining the file of the superior court in the matter.

[2] The trial court's memorandum indicates that the third amended complaint has been amended and supplemented. The issues raised here do not involve any amendments or supplements to the pleadings, and the parties make no reference to them. We have not examined the amendments or supplements.

these seek to assert grounds for relief on a class basis.

Association pleads in some detail that one of the purposes and objects of its corporate existence is to act for its members and for the residents and property owners of the City of Inglewood in matters concerning their social welfare, health, safety and well-being. It alleges that its has been authorized by a corporate resolution to maintain the action to protect its members. It further alleges that its chief executive officer and president are themselves homeowners and residents of Inglewood and that they and the Association sue as representatives of all property owners and residents in Inglewood (asserted to be approximately 94,000 persons). Numerous other allegations are made as to the size and identity of the class, the existence of common questions of law and fact, and the nature of the common as well as the individual relief which is sought.

On August 16, 1971, Los Angeles filed a notice of motion for an order dismissing Association's "complaint, as amended," (the reference must be to the third amended complaint which had been filed almost a year previously) and for the entry of judgment in favor of the city. This motion was made on the ground that plaintiff had no property interest of its own in the City of Inglewood. The motion was supported by a declaration of a deputy city attorney referring to the fact that in its answers to interrogatories Association had failed to identify any property owned by it in the City of Inglewood. On November 1, 1971 the trial court entered its minute order granting "defendant's motion" previously submitted. Nunc pro tunc, the court clarified the minute order on November 4, 1971 by specifically referring to the motion which had been granted as "Defendant's motion for order dismissing the Complaint [Third Amended] as amended as to [Association]. . . .

In the same minute orders the court denied without prejudice to later renewal motions which plaintiffs had previously made for reconsideration of orders sustaining demurrers.[3] Appellant promptly filed a notice of appeal from the November 1, 1971 minute order, but never pursued the appeal.[4]

On July 11, 1972 Los Angeles filed a notice of motion for judgment on the pleadings. This motion was directed to the first ten causes of action of the third amended complaint -- the causes which purport to seek class action relief. Although the file does not reflect any formal proceedings in court, there must have been informal discussions between counsel, because Los Angeles' memorandum of points and authorities comments that the city's demurrer had already been sustained to all of these causes of action except the second but that since plaintiffs were going to move the court to reconsider some of its previously made

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[3] Neither this motion nor the demurrers are discussed in the briefs.

[4] The order was not one from which an appeal could be taken. If regarded as a dismissal, a formal order was required. (Code Civ. Proc., §581d; Palazzi v. Air Cargo Terminals, Inc., 244 Cal. App. 2d 190, 192.) If regarded as a summary judgment, the summary judgment itself and not the order for it is the appealable matter. (Integral Land Corp. v. Anderson, 62 Cal. App. 2d 770, 771.) Los Angeles never submitted a summary judgment, advising the court by letter that it had not done so because the court had indicated by letter to the parties that after decision of Nestle v. City of Santa Monica, 6 Cal. 3d 920, then pending in the Supreme Court, but later decided April 28, 1972, the trial court would welcome motions for reconsideration.

rulings the motions for judgment on the pleadings was directed to all of the class action counts.

On July 28, 1972, a hearing was held on the motion for judgment on the pleadings and on plaintiff's motion for reconsideration. The latter motion does not appear in the record. The matters were submitted for decision and on August 15, 1972, the court filed a memorandum ruling, a nimute order in conformity with the memorandum which, so far as concerns this appeal, made various rulings as to demurrers and dismissed the second cause of action, and a summary judgment. The latter dismissed Association's complaint. This appeal followed.

Appealability

It will be remembered that the notice of appeal states that the appeal is "from the Memorandum Ruling and Order" made on August 15, 1972. While the memorandum ruling is not itself an order, and while the minute order and the summary judgment are not in the record as originally prepared (see, fn. 1, supra), it is clear to us that the appeal is from the summary judgment which was entered against appellant. Neither of the two motions which Los Angeles directed against Association was entitled as a motion for summary judgment. Nevertheless, in its memorandum the trial court stated that "summary judgment in favor of the City and against the Association appears to be proper." Los Angeles refers, in its brief, to its motion for an order dismissing the complaint, filed August 16, 1971 as a motion for summary judgment, and to the court's action of August 15, 1972 as having granted that motion. It is clear that a summary judgment entered pursuant to section 437c of the Code of Civil Procedure "is an appealable judgment as in other cases." (Code Civ. Proc. §437c.) Therefore, construing the notice of appeal to refer to the summary judgment, the appeal lies.

Standing of Association

The trial court stated in its memorandum ruling that its previous minute order dismissing the complaint as to Association was proper. That order was based on a showing that Association had no property interest of its own and therefore could not represent the class in question. The authorities there relied upon by Los Angeles were Los Angeles Fire & Police, etc., League v. Rodgers, 7 Cal. App. 3d 419, and Greater Westchester Homeowners Assn., Inc. v. City of Los Angeles, 13 Cal. App. 3d 523. Since the decision of the trial court in this matter of the case of Residents of Beverly Glen, Inc. v. City of Los Angeles, 34 Cal. App. 3d 117, has been decided. It involved exactly the same issue and procedure as was followed here: a summary judgment against an incorporated plaintiff which owned no property in the area affected. Residents held that the plaintiff there had standing to sue for a class, since the allegations of its complaint established that the members of the corporation lived in the affected area and suffered injury from the matters complained about. (34 Cal. App. 3d at p. 121.) Here, Association has clearly alleged that the operation of Los Angeles International Airport injures its members and residents and property owners in the City of Inglewood. The complaint is even more explicit in showing injury than was the pleading involved in Residents of Beverly Glen, supra. That case is dispositive of the issue here presented. We hold that Association does have standing to maintain this action.

Propriety of Class Action

The gravamen of the action below presents the question of injury to various parcels of land in the City of Inglewood, and to individuals residing in that city, because of the operation of an airport. The complaint alleges the existence of many common questions of fact and law, while at the same time it is recognized that issues

individual to specific class members are also presented. " . . . [T]he determination of the question whether a class action is appropriate will depend upon whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits. . . ." (Vasquez v. Superior Court (1971) 4 Cal. 3d 800, 810.) "The ultimate question in every case of this type is whether, given an ascertainable class, the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants. . . ." (Collins v. Rocha, 7 Cal. 3d 232, 238.)

Los Angeles argues that there is no ascertainable class here, because there is a constant movement of people in and out of the City of Inglewood. Los Angeles "...apparently fails to distinguish between the necessity of establishing the existence of an ascertainable class and the necessity of identifying the individual members of such class as a prerequisite to a class suit. If the existence of an ascertainable class has been shown, there is no need to identify its individual members in order to bind all members by the judgment. The fact that the class members are unidentifiable at this point will not preclude a complete determination of the issues affecting the class...." (Darr v. Yellow Cab Co., (1967) 67 Cal. 2d 695, 706.) The argument is therefore, not well taken.

Los Angeles also argues that damages will have to be individually ascertained for each of the class members, and that jointly triable issues are not numerous or substantial enough to justify class treatment.

In City of San Jose v. Superior Court, supra, 12 Cal. 3d 447, the action was filed on behalf of all real property owners situated in the flight pattern of the San Jose Municipal Airport. Pro-

ceeding on theories of inverse condemnation and nuisance, recovery was sought for diminution in the market value of the property caused by aircraft noise, vapor, dust and vibration.

We agree with respondent that, for the reasons stated by the Supreme Court in San Jose (see, especially, 12 Cal. 3d at pp. 460-463) this action may not be maintained on a class basis. It is unnecessary to restate those reasons here. We are bound by the higher court's decision.

The issues in the instant case include claims of inverse condemnation and nuisance, as in San Jose, and as well diverse other claims at least equally clearly requiring individual treatment if nuisance and inverse condemnation so require.

We note that there are numerous individual plaintiffs below and that the complaint asserts, on their behalf, causes of action in many respects paralleling those sought to be asserted by the Association. Nothing in this opinion is to be taken as intimating any decision on our part as to the merits or demerits of those causes of action. We express no views thereon.

The judgment dismissing the Association as a party plaintiff is affirmed.

NOT FOR PUBLICATION

We concur: COLE, J.*

FILES, P.J.

KINGSLEY, J.

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* John L. Cole, Judge of the Superior Court of Los Angeles County, assigned by the Chairman of the Judicial Council.